

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

CHRISTOPHER E. WASHINGTON,)
Plaintiff,)
v.)
EXPERIAN, et al.,)
Defendants.)
CAUSE NO. 1:09-CV-0078 WL

OPINION AND ORDER

Plaintiff Christopher Washington requests leave to proceed *in forma pauperis* on appeal. Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith."

The court denied the plaintiff leave to proceed *in forma pauperis* in the district court and dismissed his complaint pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) because comparison of his complaint in this case with his earlier complaint in 1:07cv301 RM established that they both name the same defendants and that both complaints are based on the same operative facts. The docket in 1:07cv301 RM establishes that the defendants filed motions to dismiss and that the court dismissed that case pursuant to Fed. R. Civ. P. 12(b)(6) on the merits and with prejudice. Thus these two complaints have an identity of the parties or their privies and an identity of the operative facts, and the final judgment in 1:07cv301 RM was on the merits. Accordingly, all of the elements necessary for the doctrine of *res judicata* are present. Because the complaint in this cause of action is barred by the doctrine of *res judicata*, the court determines that this appeal is not taken in good faith. The plaintiff may

still proceed with this appeal, but do so he must pay the full amount of the filing and docketing fees.

For the foregoing reasons, the court certifies that the appeal in this cause of action is not taken in good faith and DENIES the plaintiff's motion for leave to proceed *in forma pauperis* on appeal (docket #8).

SO ORDERED.
May 1
DATED: April 1 2009

s/William C. Lee
WILLIAM C. LEE, JUDGE
United States District Court
